

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
MOBIL OIL CORPORATION,)
)
Appellant,)
)
v.)
)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
)
Respondent.)

PCHB No. 591

**FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

A formal hearing on an appeal to review a \$5,000.00 civil penalty assessed upon Appellant for an alleged oil spill was held before the Pollution Control Hearings Board, David Akana, presiding officer, in Seattle (October 15, 16 and 17, 1974) and in Lacey on November 14, 1974.

Appellant, Mobil Oil Corporation, was represented by its attorney, Stephen C. Kelly; Respondent Department of Ecology was represented by its attorney, Thomas C. Evans, Assistant Attorney General. Sherri Darkow and Eugene E. Barker, Olympia court reporters, recorded the proceedings.

Having read the transcript and briefs, having seen the exhibits,

exceptions to the proposed Order having been made, and said exceptions being granted in part and denied in part, and having been fully advised, the Pollution Control Hearings Board makes the following

FINDINGS OF FACT

I.

Appellant, Mobil Oil Corporation, deals with oil products in the State of Washington. Its offices are located in Seattle, but its operations extend to other areas of the state.

II.

On September 1, 1972, Mobil Oil Corporation (Mobil) entered into a lease agreement with Able Oil, Inc. (Able) wherein Mobil would lease to Able the grounds and some facilities of a bulk plant located in Hoquiam. (Respondent's Exhibit R-26; Appellant's Exhibit A-28). In a document dated with the same date as this lease, Mobil retained "the exclusive use of the . . . designated storage tanks, together with necessary bulk products handling facilities, such as pumps and pipelines for the storage and handling of its products" (Respondent's Exhibit R-26). Thus, every storage tank within the diking system (dikes Nos. 1-4, Appellant's Exhibit A-2) was for the use of Mobil. Mobil retained title to the products within the storage tanks. Able was required to account for the product and pay for the amount that it withdrew. This agreement was subsequently changed prior to December of 1973 by oral agreement. Able was allowed to use the tanks to hold products. Able acquired title of the products upon delivery by Mobil. However, Mobil could and did exercise a substantial amount of control over the products received at

1 the plant. (TR 2--95 thru 114). Moreover, the oil that overflowed in
2 December of 1973 was either owned by Mobil or caused by oil controlled
3 by Mobil. (TR 2-101, 102).

4 Mobil, at its option, could rebuild or make substantial improvements
5 on the leased premises. Approximately \$84,000 was contemplated for such
6 renovation and improvement. If such improvements were made, Able's
7 rental would increase from \$100 to \$300 per month. The above-
8 contemplated repairs did not include repair of the diking system, however.

9 III.

10 The Hoquiam bulk plant experienced one prior "overflow" on June 2,
11 1973. That overflow occurred during the oil transfer process from an oil
12 tanker to the diesel storage area. Because the oil was contained in the
13 diked area, no violation occurred.

14 IV.

15 On April 19, 1972, the Hoquiam bulk plant was inventoried and
16 inspected by the Department of Ecology. At this time, a significant
17 crack in the dike was discovered by the Department's inspector and
18 was denominated as "inadequate diking" on the inspection report.
19 The plant was also cited in the report for "poor housekeeping," meaning
20 that the presence of oil on the ground made the area "contaminated
21 looking." Poor lighting of the area was also cited as a potential
22 pollution hazard because an overflow would not be seen at night from
23 a tank that was not properly illuminated. The overall state of the
24 plant was described in the inspection report as being in "poor"
25 condition. A copy of this report was received by Mobil.

26 On September 26, 1973, a subsequent inspection again revealed poor

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housekeeping and poor lighting but did not mention the inadequate diking problem. Mobil had undertaken some corrective measures as to lighting on December 26, 1972, however (Appellant's Exhibit A-24). The dike was never adequately repaired (see Respondent's Exhibit R-9). Diking appears to be the only substantial containment or safety device used at the Hoquiam plant to contain spills. There are no warning devices to indicate that a tank is full.

V.

On November 20, 1973, Able ordered one load (a "load" is equal to 7,000 gallons) of stove oil from Mobil. On November 28, 1973, Able ordered an additional two loads from Mobil. Mobil placed an order for a total of three loads. On December 1 and 2, 1973, the orders placed by Mobil were received at Able's plant and transferred to Tank M-101 (Appellant's Exhibit A-2 - maximum capacity, 20,191 gallons) which supposedly had been "empty," i.e., 343 gallons in the tank that could not be drained. Sufficient withdrawals had been made to insure that the storage tank would not overflow. However, through a mix-up in the truck dispatches, an independent trucker brought five loads of stove oil instead of the three loads ordered by Able and Mobil (see Appellant's Exhibit A-3(a-d), A-14). The independent trucker had "free access" to the plant, which meant that it could unload its cargo at any time and without supervision by plant personnel. During the unloading process, oil began overflowing, unnoticed, at an undetermined time for some undetermined period of time during the weekend. An unusually heavy rain fell during the weekend, which complicated the detection of the spill. This rain also contributed to the increased water level in the dikes.

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1 The spill was first noticed on December 3, 1973 at about 1:30 p.m. by an
2 adjacent property occupier. Immediate clean-up operations were under-
3 taken which lasted for more than five days with a cost of about \$12,000.
4 Approximately 12,443 gallons of oil were recovered in the clean-up
5 operations. About 3,000 gallons of this total was recovered outside the
6 diked area. An unknown quantity of oil escaped into the waters of Grays
7 Harbor, which are waters of the state.

8 VI.

9 As a result of this spill, the Department assessed a \$5,000 civil
10 penalty upon Mobil for negligently discharging oil:

11 The basis for this penalty is that on the 3rd day of
12 December, 1973, personnel (employees) of Mobil Oil Corporation
13 did negligently discharge oil into public waters of this
14 State. Specifically, it is charged that said employees
15 ordered a total of 28,000 gallons of stove oil to be
16 delivered to a storage tank with a capacity of only
20,191 gallons. As a consequence, oil overtopped the
receiving tank into a bermed area surrounding the tank,
through the breached wall of the berm, and into a
drainage ditch tributary to an unnamed slough and Grays
Harbor, public waters of this State.

17 Mobil applied for relief from the penalty, which the Department
18 denied. This \$5,000 penalty is the subject matter of this appeal.

19 VII.

20 At the time of this spill, an excessive amount of water had
21 collected in dike area No. 2. The high level of water in the dike
22 materially contributed to allowing the oil to escape through a large
23 crack in the dike. The evidence shows that Mobil had undertaken the duty
24 to drain the diked area and Mobil had knowledge of the expected amount of
25 rainfall in the area. Mobil's retention of all the storage tanks
26 certainly included the diking arrangements and repair thereof since the

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appears no other safety device or alarm to indicate an overflow or to contain an overflow (Respondent's Exhibit R-26). The dikes, therefore, are a part of the "necessary bulk products handling facilities."

VIII.

The amount of the penalty was determined after considering the gravity of the violation, the previous record of the violator, and other appropriate considerations. A five thousand dollar civil penalty was not unreasonable in view of the circumstances of this case as disclosed by the evidence presented at the hearing.

IX.

Any Conclusion of Law hereinafter recited which should be deemed a Finding of Fact is hereby adopted as such.

Based upon the foregoing Findings of Fact, the Pollution Control Hearings Board makes the following

CONCLUSIONS OF LAW

I.

RCW 90.48.350 provides in part:

Any person who intentionally or negligently discharges oil, or causes or permits the entry of the same, shall incur, in addition to any other penalty as provided by law, a penalty in an amount of up to twenty thousand dollars for every such violation; said amount to be determined by the Director of the Commission after taking into consideration the gravity of the violation, the previous record of the violator in complying, or failing to comply, with the provisions of chapter 90.48 RCW, and such other considerations as the Director deems appropriate. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for.

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1 II.

2 As we construe the pleadings in this matter, there are two specific
3 allegations of negligence, to wit: ordering a quantity of oil which
4 exceeded the holding capacity of the receiving storage tank; and
5 inadequately maintaining the protective wall. Evidence bearing on the
6 foregoing allegations was admitted without objection.

7 III.

8 Mobil is not responsible for the acts of the independent trucking
9 company. Therefore, it is not responsible for the excessive oil
10 delivered.

11 IV.

12 Mobil had a duty to maintain the diked areas because it reserved
13 the exclusive use of the storage tanks and handling facilities. The
14 dikes and the area within the dikes are an integral part of the handling
15 facilities because the dikes appear to be the only substantial pollution
16 control arrangement that could avert oil leakage into the waters of the
17 state. To allow Appellant to so define its responsibilities whereby it
18 could retain the benefits of ownership of the tanks yet escape the
19 consequences of oil spills from its operations by merely leasing the
20 dikes and enclosed areas to others cannot be binding upon the state.
21 Here the dikes are an integral part of the handling facilities and are
22 inseparable for purposes of determining who owes a duty to the state.
23 Mobil owed a duty to maintain the diked area in reasonable repair and
24 condition. By allowing the dike to remain in a defective condition
25 after notice of a large crack in it and by allowing the water to rise
26 in the diked area to a height that assisted in the escape of the oil

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1 through the crack, Mobil breached its duty of care owed to the state.
2 This resultant breach allowed the oil to reach the waters of the state
3 for which a penalty can be properly imposed.

4 V.

5 The \$5,000 civil penalty is reasonable in amount.

6 VI.

7 Any Finding of Fact which should be deemed a Conclusion of Law is
8 hereby adopted as such.

9 Based upon the foregoing, the Pollution Control Hearings Board
10 hereby enters the following

11 ORDER

12 The \$5,000 civil penalty assessed by the Respondent is affirmed.

13 DONE at Lacey, Washington this 29th day of April, 1975.

14 POLLUTION CONTROL HEARINGS BOARD

15 W. A. Gissberg
16 W. A. GISSBERG, Member

17 Walt Woodward
18 WALT WOODWARD, Member

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